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IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

AT&T CORP.,
Petitioner,
v.
CENTRAL OFFICE TELEPHONE, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF UNITED STATES TELEPHONE ASSOCIATION, BELLSOUTH TELECOMMUNICATIONS, BELLSOUTH CORPORATION, PACIFIC BELL AND SOUTHWESTERN BELL TELEPHONE COMPANY AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICI CURIAE* [1]

The United States Telephone Association ("USTA"), BellSouth Telecommunications and BellSouth Corporation (collectively, "BellSouth"), Pacific Bell and Southwestern Bell Telephone Company ("Southwestern Bell") are keenly interested in the outcome in this case.[2] USTA

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[1] Pursuant to Rule 37.6 of the Rules of the United States Supreme Court, *amici* state that no counsel for a party has authored this brief in whole or in part, and that no person or entity, other than *amici*, their members, or their counsel, has made a monetary contribution to the preparation or submission of this brief.

[2] Written consent to the filing of this brief has been obtained from the parties to this case. The consent letters accompany this brief.

is the leading trade association for the local telephone industry in the United States. Founded a century ago, USTA represents over 1,000 small, mid-size and large local exchange carriers ("LECs")—providers of local telephone service—that operate more than 95 percent of the nation's total number of local access lines.[a] BellSouth, Pacific Bell and Southwestern Bell are regional Bell Operating Companies that are members of USTA. BellSouth provides local telephone service as Southern Bell in Florida, Georgia, North Carolina and South Carolina and as South Central Bell in Alabama, Kentucky, Louisiana, Mississippi and Tennessee. Pacific Bell provides local telephone service in California. Southwestern Bell provides local telephone service in Missouri, Kansas, Arkansas, Oklahoma and Texas. USTA, BellSouth, Pacific Bell and Southwestern Bell frequently file *amicus curiae* briefs in the federal courts of appeals and the United States Supreme Court on issues of serious concern to the local telephone industry, and USTA and Pacific Bell thus participated as *amici curiae* in the proceedings below, and USTA, Pacific Bell and Southwestern Bell filed an *amici* brief in this Court in support of the petition for a writ of certiorari.

The Ninth Circuit's decision defining the scope of the "filed tariff," or "filed rate," doctrine substantially affects USTA and its members, including BellSouth, Pacific Bell and Southwestern Bell, because that doctrine governs the legal obligations of LECs, as well as those of long distance carriers such as petitioner. Like long distance carriers, LECs are statutorily required to provide services pursuant to tariffs on file with federal and state regulatory agencies. The rule adopted by the Ninth Circuit in this case accordingly affects the terms of service provided to millions of local telephone customers across the country and directly undermines USTA's important interests in (1) ensuring the stability of a regulatory regime that this

[a] Since petitioner is a provider of long distance services, it is not a member of USTA.

Court repeatedly has upheld and that has served carriers and customers well for many decades; (2) preventing customers from asserting entitlements to rates or services that vary from the rates or services specified in a carrier's published tariffs; and (3) promoting the key federal and state statutory requirements of uniform service and nondiscriminatory pricing.

SUMMARY OF ARGUMENT

As the brief of petitioner demonstrates, this Court repeatedly has held that a carrier's obligations to its customers are governed exclusively by the terms of its filed tariffs, and the Ninth Circuit's decision directly conflicts with this settled interpretation of the Communications Act of 1934. *Amici* USTA, BellSouth, Pacific Bell and Southwestern Bell seek to emphasize two reasons why this Court should continue to adhere to that interpretation of the filed rate doctrine and reverse the decision below.

First, the rule adopted by the Ninth Circuit will result in the very harms that the filed rate doctrine was designed to avoid. By permitting individual customers with greater bargaining power to demand and enforce terms that afford them additional or enhanced services for the rate established in the tariff, the Ninth Circuit's rule sanctions and promotes discriminatory arrangements that defeat the statutory goal of uniform treatment of all customers. And as a further consequence, the Federal Communications Commission (the "FCC" or "Commission") and state public utility commissions are effectively deprived of their exclusive authority to ensure the establishment of fair and nondiscriminatory rates for carrier services. Under the Ninth Circuit's approach, arrangements that have never been reviewed or approved by the FCC (or the state public utility commissions) can be upheld and enforced by courts.

Second, Congress recently confirmed its view that only the Commission, and not customers, carriers, or courts,

should determine when it is appropriate to permit contracts that are not subject to the filed rate doctrine. Congress addressed concerns relating to the continued necessity of the tariff-filing requirement and the filed rate doctrine in Section 10 of the Telecommunications Act of 1996 (the "1996 Act"). That section requires the Commission under certain circumstances to exempt common carriers from any obligation to file tariffs for interstate services, thus leaving to the Commission the exclusive authority to determine when the filed rate doctrine should and should not apply. As the Court stated in reaffirming the filed rate doctrine less than four years ago in *MCI Telecommunications Corp. v. AT&T Co.*, this Court and the FCC "are bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes." 512 U.S. 218, 231 n.4 (1994). Because the Ninth Circuit's decision cannot be reconciled with Congress' recently enacted, clear statutory design, that decision should be reversed.

ARGUMENT

I. THE NINTH CIRCUIT'S APPROACH WILL RESULT IN THE VERY HARMS THAT THE FILED RATE DOCTRINE WAS DESIGNED TO PREVENT.

For almost a century, filed tariffs have been the cornerstone of the relationship between a regulated common carrier and its customers. Section 203(a) of the Communications Act of 1934 provides that "[e]very common carrier . . . shall . . . file with the Commission and print and keep open for public inspection schedules showing all charges . . . and showing the classifications, practices, and regulations affecting such charges." 47 U.S.C. § 203(a). The statute emphasizes that "no carrier shall . . . charge, demand. collect or receive a greater or less or different compensation for such communication, or for any service in connection therewith . . . other than the charges specified" in the tariff. *Id.* § 203(c). Indeed,

the statute specifically forbids carriers from extending to any person any "privileges or facilities . . . or enforc[ing] any classifications, regulations, or practices affecting such charges, except as specified in [the tariff]." *Id.* States have similar statutory tariff-filing requirements. *See, e.g.*, Cal. Pub. Util. Code § 495 (Deering 1997); N.Y. Pub. Serv. Law § 92 (Consol. 1997). As this Court recently observed, "[t]he tariff-filing requirement is . . . the heart of the common-carrier section of the Communications Act," since "rate filing was Congress's chosen means of preventing unreasonableness and discrimination in charges." *MCI*, 512 U.S. at 229-30.

The filed rate doctrine has long made clear that carriers, such as USTA's members, are forbidden to charge rates for their services other than those specified in the tariffs they have on file with the FCC, or to vary the terms of service in any way from the terms specified in their tariffs. *See Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 126 (1990); *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 (1981); *Keogh v. Chicago & Northwestern Ry.*, 260 U.S. 156, 163 (1922); *Chicago & Alton R.R. v. Kirby*, 225 U.S. 155, 163-66 (1912). State courts consistently have reaffirmed the applicability of the doctrine to tariffs filed with state public utility commissions as well. *See, e.g., Teleconnect Co. v. U. S. West Communications, Inc.*, 508 N.W.2d 644, 647-50 (Iowa 1993); *GTE North Inc. v. Public Serv. Comm'n*, 500 N.W.2d 284, 288-89 (Wis. 1993). LECs and other common carriers thus file detailed tariffs with both the FCC and state regulatory commissions specifying their rates and terms of service, and the carriers are bound to adhere to those tariffs unless a regulatory agency finds them unreasonable. This bright-line rule has ensured the existence of reasonable and nondiscriminatory rates and services, avoided situations of unequal bargaining power between carriers and consumers, minimized unnecessary confusion on the part of both carriers and consumers, and given clear guidance to

the carriers themselves as to the statutory and regulatory requirements that govern their operations. By declining to apply the filed rate doctrine to preempt the respondent's state law claims based on alleged extra-tariff agreements relating to the provision of services, the Ninth Circuit has undermined "Congress's chosen means of preventing unreasonableness and discrimination in charges" throughout the country. *MCI*, 512 U.S. at 230.

Although this case was brought by the customer of a long distance carrier, the Ninth Circuit's interpretation of the filed rate doctrine will have the most substantial impact on local exchange customers and carriers. As discussed below, the 1996 Act gave the FCC the authority to remove the tariff requirements to promote competition, *see* 47 U.S.C. § 160, and the FCC has proposed to exercise that authority with respect to the filing of tariffs relating to the provision of domestic long distance services. *See Policy and Rules Concerning the Interstate Interexchange Marketplace, Second Report & Order*, CC Docket No. 96-61, 11 FCC Rcd 20,730 (1996), *stayed on appeal, MCI Telecomms. Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997), *recon.*, FCC No. 97-293 (released Aug. 21, 1997) ("*Detariffing Order*"). The same is not true, however, with respect to the FCC and state-regulated tariff-filing requirements for the provision of other services by local telephone carriers. Thus, *every single incumbent LEC in the country*—more than 1,300 carriers in all—remain fully subject to the statutory tariff-filing requirement at both the federal and state levels. Particularly in these changing times of rapidly increasing competition in all telecommunications markets, continued application of the filed rate doctrine to regulated services is critical to the maintenance of stable, consistent relationships between local carriers and their customers.

The Ninth Circuit's rule eviscerates the benefits of the filed rate doctrine for the provision of local exchange service. First, the lower court's approach will cause significant uncertainty and confusion over the rates that local carriers charge and the services that they provide, despite this Court's long-settled conclusion that rate filing statutes were designed to "render rates definite and certain." *Arizona Grocery Co. v. Atchison, T. & S. F. Ry.*, 284 U.S. 370, 384 (1932). If this Court upholds the Ninth Circuit's approach, telecommunications carriers will remain obligated to file tariffs, charge and collect only the filed rate for the regulated services they provide, and apply their tariffs universally to all similarly situated customers. *See* 47 U.S.C. §§ 201-203. But USTA's members, such as BellSouth, Pacific Bell and Southwestern Bell, as well as other carriers, no longer will be entitled to rely on filed tariffs as the definitive statement of their rights, duties and liabilities with respect to the telecommunications services they provide to customers, and they will have no way to guarantee the provision of uniform service to all customers. To the contrary, customers with varying degrees of bargaining power will obtain—or at least will attempt to assert that they have obtained—different rates and terms of service than the rates and terms of service available under a carrier's filed tariff. As a result, customers who previously could rely on the certainty and predictability of receiving the rate and terms of service specified in tariffs filed with federal and state regulators no longer will have any assurance of the rate to which they are entitled for a particular service, much less the rate paid by, and the services provided to, their competitors.

Second, affirmance of the Ninth Circuit's approach fosters emergence of "side deals" that will defeat the statutory goal of ensuring the provision of uniform rates and services for similarly situated customers. *See Maislin*, 497 U.S. at 126 (quoting *Keogh*, 260 U.S. at 163 (explaining that stringent application of the filed rate doctrine is necessary " 'because otherwise the paramount purpose of Congress—prevention of unjust discrimination—might be defeated' ")). In the past, the filed rate doctrine prevented customers from seeking to enforce purported

special arrangements relating to matters such as the availability of lower rates, the provisioning of different services, and the arbitrability of disputes.[4] But under the Ninth Circuit's approach, any customer will be able to claim the benefit of such individualized arrangements and obtain the non-uniform treatment that Congress clearly intended to prevent in the provision of regulated services. Indeed, the "freedom" to deviate from the terms of a tariff promotes the very kind of discriminatory practices and preferences that Congress intended to prohibit. In today's increasingly competitive markets, the Ninth Circuit's rule gives preferred customers the incentive to demand expedited or enhanced services unavailable to others, thereby causing discrimination against other customers who pay the same filed rate. And LECs that are unwilling to offer selected customers the special deals they demand will suffer a competitive disadvantage in providing regulated services.[5]

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[4] Recent examples include: *Fax Telecommunicaciones v. AT&T*, 952 F. Supp. 946, 954 (E.D.N.Y. 1996) (rejecting a claim for a rate different from the tariffed rate); *Teleconnect*, 508 N.W.2d at 648 (rejecting a claim from a customer asking to receive services other than those provided for in the tariff); *MCI Telecomms. Corp. v. Happy the Glass Man, Inc.*, 974 F. Supp. 1016, 1020-21 (E.D. Ky. 1997) (dismissing a complaint claiming that a billing dispute should not proceed to arbitration even though the tariff specifically provided for arbitration); *Pay Phone Concepts, Inc. v. MCI Telecomms. Corp.*, 904 F. Supp. 1202, 1207 (D. Kan. 1995) (same); *see also* note 4 *infra*.

[5] The FCC does allow certain carriers to enter into "contract-based tariffs" with customers. A "contract-based tariff" is a tariff based on an individualized service contract with a customer. Like other tariffs, however, contract-based tariffs still must be filed with the FCC and made available to similarly situated customers throughout the carrier's service area. *See* 47 C.F.R. §§ 61.3(m), 61.55; *see also Competition in the Interstate Interexchange Marketplace, Report & Order*, CC Docket No. 90-132, 6 FCC Rcd 5880, 5902 (1991). Likewise, state public utility commissions often permit carriers to offer services pursuant to "contract service arrangements," which, although designed to meet the needs of a particular customer, are available to others on a nondiscriminatory basis.

Third, the lower court's approach would seriously undermine the FCC's and state public utility commissions' jurisdiction and ability to establish and oversee tariff policy, a critical component of the filed rate doctrine that this Court has emphasized in the past. *See Arkansas Louisiana Gas*, 453 U.S. at 577-78 (noting courts' lack of authority to alter rates subject to the exclusive jurisdiction of regulatory commissions). If private parties are free to ask different courts across the country, rather than the FCC or state commissions, to define the scope of filed tariffs, those agencies will be unable to effectively ensure that carriers apply rates and terms of service equally to all similarly situated customers. As in this case, the Ninth Circuit permitted a jury to interpret a federally filed tariff in one manner, while other factfinders may well interpret the very same tariff differently, thus *requiring* the non-uniform application of the petitioner's tariff. Despite its expertise and knowledge of the industry, and despite its statutorily conferred jurisdiction over tariffs, the FCC's authority to oversee the fair and nondiscriminatory application of tariffs across the country will be seriously diminished.

II. THE NINTH CIRCUIT'S INTERPRETATION CANNOT BE RECONCILED WITH THE 1996 AMENDMENTS TO THE COMMUNICATIONS ACT.

There was no basis for the Ninth Circuit to restrict the scope of the filed rate doctrine established by a century of precedent because the 1996 amendments to the Communications Act of 1934 establish that Congress intended the doctrine to apply unless and until the FCC finds that it should not. Congress determined long ago that the tariff-filing requirement is the appropriate way to ensure that carriers' "charges, practices, classifications, and regulations" are just and reasonable. *See* 47 U.S.C. § 201(b). In enacting Section 203 of the Communications Act, Congress thus gave the FCC—not private parties or courts—the jurisdiction to determine whether carriers' interstate rates and services are just and reasonable.

See id. § 203. Only two years ago, Congress reaffirmed this unambiguous statutory design in amending the Communications Act to confer jurisdiction on the FCC to decide when tariffs no longer are warranted, and thus when the filed rate doctrine no longer would apply. *See* 47 U.S.C. § 160. Because the Ninth Circuit ignored Congress' explicit statutory scheme, this Court should reverse the decision below.

Because Congress has legislated definitively on the requirement that common carriers file tariffs that govern their rates and services, this Court consistently has found the filed rate doctrine applicable to claims of supposed special rate or service arrangements.[6] As recently as 1994, the Court explained in *MCI* that, whatever the merits of Congress' chosen means of preventing rate discrimination, the statute clearly requires adherence to the filed rate doctrine. As the Court reasoned, "there is considerable 'debate in other forums about the wisdom of the filed rate doctrine,' . . . [b]ut our estimations, and

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[6] *See, e.g., Maislin*, 497 U.S. at 126 (reaffirming that the filed rate doctrine prohibits variance from the filed rate); *Arkansas Louisiana Gas*, 453 U.S. at 582 (finding that the filed rate doctrine precluded an award of damages when the contract rate differed from the rate in the filed tariff); *Davis v. Cornwell*, 264 U.S. 560, 561-62 (1924) (refusing to enforce a contract providing for a service not specified in the filed tariff); *Keogh*, 260 U.S. at 163 (finding that the "rights as defined by the tariff cannot be varied or enlarged by . . . contract . . . of the carrier"); *Western Union Tel. Co. v. Esteve Bros. & Co.*, 256 U.S. 566, 572 (1921) (holding that a customer was bound to the terms of the filed tariff limiting carrier liability even though the customer never agreed to the term); *Chicago & Alton R.R.*, 225 U.S. at 163-66 (refusing to allow a carrier to provide a service outside of its specified tariff); *Armour Packing Co. v. United States*, 209 U.S. 56, 81 (1908) (refusing to enforce a contract because "[i]f the rates are subject to secret alteration by special agreement then the statute will fail of its purpose to establish a rate duly published, known to all, and from which neither shipper nor carrier may depart").

the Commission's estimations, of desirable policy cannot alter the meaning of the Federal Communications Act of 1934." *MCI*, 512 U.S. at 234 (quoting *Security Servs., Inc. v. Kmart Corp.*, 511 U.S. 431, 440 (1994)). The Court concluded that, "[f]or better or worse, the Act establishes a rate-regulation, filed-tariff system for common-carrier communications," and efforts to circumvent that result "'address themselves to Congress, not to the courts.'" *Id.* (*quoting Armour Packing*, 209 U.S. at 82); *see also Maislin*, 497 U.S. at 135-36 (stating that "[i]f strict adherence to [the statutory tariff-filing requirement] as embodied in the filed rate doctrine has become an anachronism . . ., it is the responsibility of Congress to modify or eliminate these sections").

The policy justifications for the statutory tariff-filing requirement and the filed rate doctrine nevertheless have been the subject of continuing debate. After all, for more than a decade, not only carriers but the Commission itself unsuccessfully had sought to eliminate the tariff-filing requirement for some services, particularly for domestic long distance services. *See MCI*, 512 U.S. at 220-23. Plaintiffs also continued to file unsuccessful lawsuits in courts across the country seeking to override the filed rate doctrine and look beyond the terms of carriers' tariffs despite Congress' statutory scheme. *See, e.g., Pay Phone Concepts*, 904 F. Supp. at 1207; *International Telecomms. Exch. Corp. v. MCI Telecomms. Corp.*, 892 F. Supp. 1520, 1541 (N.D. Ga. 1995).

Against this backdrop, Congress enacted the 1996 Act, which specifically addresses the concerns that had been raised. *See Detariffing Order*, 11 FCC Rcd at 20,738 (noting that Congress enacted Section 10 "[a]gainst this background" of efforts to detariff long distance services). But instead of abolishing the tariff-filing requirement, Congress chose to give the FCC the authority to determine when rates and services could be detariffed and thus when the filed rate doctrine would be inapplicable. Section 10(a) provides:

[T]he Commission shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that—

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a); *see also* S. Conf. Rep. No. 104-230, at 184 (1996). Section 10(b) goes on to require that the Commission, in deciding whether to exercise its forbearance authority, "shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services." 47 U.S.C. § 160(b).[7] Thus, Congress made clear that only the Commission—not private parties or courts—has the authority to determine when competitive conditions justify reducing regulatory oversight and no longer necessitate

[7] Some state legislatures similarly have granted state public utility commissions the authority to forbear from requiring the filing of tariffs for intrastate services upon making analogous findings. *See, e.g.*, Cal. Pub. Util. Code § 495.7 (Deering 1997); Mont. Code Ann. § 69-3-808 (1997).

the filing of otherwise statutorily-required tariffs. Only then would the filed rate doctrine no longer be relevant.

Since the enactment of the 1996 Act, the Commission has exercised its statutorily-conferred forbearance authority in a number of circumstances. In some cases, the Commission has determined that competitive circumstances have warranted the detariffing of certain services, and in those cases carriers now are free to enter into separately negotiated arrangements with their customers that are subject to neither the tariff filing requirement of Section 203 nor the filed rate doctrine. *See, e.g., Hyperion Telecommunications, Inc., Memorandum Opinion & Order & Notice of Proposed Rulemaking*, CC Docket No. 97-146, 12 FCC Rcd 8596 (1997) ("*Hyperion Order*") (permissively detariffing competitive access providers' provision of interstate exchange access services). The FCC may detariff other services in the near future, as several petitions requesting detariffing presently are pending before the FCC or are on appeal.[8] The FCC also has determined that, for some services, the circumstances are not yet appropriate to permit detariffing. *See, e.g., De-*

[8] *See, e.g., Hyperion Order*, 12 FCC Rcd at 8613 (proposing mandatory detariffing for non-incumbent LEC providers of interstate exchange access services); "BOCs Petition the Commission for Forbearance of Section 203(c)(2) of the Communications Act To Issue SMS/800 Refund," *Public Notice*, DA 97-1235 (released June 11, 1997) (seeking comment on a petition by the Bell Operating Companies for forbearance from the application of Section 203(c)(2) of the Communications Act to allow those carriers to refund certain revenues); "Common Carrier Bureau Seeks Suggestions on Forbearance," *Public Notice*, DA 96-798, IAD 96-150 (released May 17, 1996) (soliciting informal comments regarding implementation of Section 10(a)); *Detariffing Order*, 11 FCC Rcd at 20,742-68 (mandatorily detariffing interstate, domestic, interexchange carriers); "Common Carrier Bureau Seeks Further Comment on Specific Questions in OSP Reform Rulemaking Proceeding," *Billed Party Preferences for InterLATA O+ Calls*, CC Docket No. 92-77, *Public Notice*, DA 96-1695, 11 FCC Rcd 12,830 (released Oct. 10, 1996) (seeking comment with respect to forbearance from applying statutory requirement that operator service providers file informational tariffs).

tariffing Order, 11 FCC Rcd at 20,783 (maintaining the tariff-filing requirement for the international portion of bundled domestic and international service offerings pending further proceedings). Customers seeking to obtain special arrangements may request that the FCC exercise its forbearance authority as well. In short, Congress has devised a scheme that the Commission is responsible for implementing consistent with the congressional design. While the respondent may prefer "the introduction of a whole new regime of regulation," that regime "is not the one that Congress established." *MCI*, 512 U.S. at 234.

Congress' statutory design also makes good sense. The FCC (at the federal level) and the state public utility commissions (at the state level) are the expert agencies that have been charged by Congress and the state legislatures with deciding whether competitive conditions are such that tariffs are no longer necessary to ensure that rates are just and reasonable and that services are provided to all customers on a nondiscriminatory basis. The typical detariffing decision is based on many factors, including the competitiveness of the market, the geographic location of the market, economic factors that may affect the market, pricing strategies, historical data, the long-range potential of the service and the impact of detariffing on state commissions and consumers. *See, e.g., Detariffing Order*, 11 FCC Rcd at 20,742-68 (discussing factors that the FCC reviewed in deciding whether to detariff long distance carriers). Particularly in today's ever-changing telecommunications marketplace, Congress' decision to make the FCC responsible for determining when market conditions are sufficiently competitive to relax regulatory oversight should be respected.

Moreover, allowing the FCC to forbear from requiring the filing of tariffs gives both the FCC and regulated common carriers much-needed flexibility. As Congress recognized in enacting the 1996 Act, both the FCC and telecommunications carriers must have the ability to adapt

to a marketplace characterized by rapidly changing technology and new competitive entrants. *See* Telecommunications Act of 1996, Pub. Law No. 104-104, Preamble, 1996 U.S.C.C.A.N. (110 Stat.) 56 (stating that the purpose of the 1996 Act is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies"). Such flexibility is particularly important in order to enable the agency to eliminate unnecessary regulation as market conditions warrant and thus carry out the procompetitive, deregulatory objectives of the 1996 Act, while at the same time ensuring that carriers' pricing practices and delivery of services are fair to all customers. The ability to enter into more flexible pricing and service arrangements in an increasingly competitive environment in turn enables carriers to adjust their operations in accordance with their own business judgment in order to compete more effectively with new market entrants. In short, under Congress' carefully designed legislative scheme, the FCC properly has the sole authority to remove unnecessary regulatory burdens on common carriers, giving those carriers the flexibility that they need in order to compete effectively in today's telecommunications marketplace.

In *MCI*, this Court made it clear that it is for Congress, not the courts, to revise or abolish the filed rate doctrine. In the 1996 amendments to the Communications Act of 1934, Congress adopted a measured approach to detariffing the telecommunications industry, and specifically delegated detariffing authority to the FCC. The decision of the Ninth Circuit undermines that statutory scheme.

CONCLUSION

For the foregoing reasons, the decision of the Ninth Circuit should be reversed.

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